



**Chapter 246-100 WAC and Chapter 246-101 WAC
Proposed HIV Rule Revisions
April 13, 2005**

Issue	Comments	DOH Recommendations to the Board
1. Provision of Information	(GACHA) suggests the addition of the word “explicit” to WAC section 246-100-207 (1)(b) (provide <i>explicit</i> verbal or written information)	Recommendation: Amend the rule to read: “ <u>explicitly</u> provide verbal or written information” This avoids possible misinterpretation of what constitutes <i>explicit</i> information (e.g., graphic).
2. Consent for Testing	(GACHA) and 246-100-207 (1)(c) (obtain or ensure <i>explicit</i> verbal or written specific consent) (Others) ¹ Maintain or establish a standard of separate written signed consent for HIV testing. This would ensure consent is obtained.	Recommendation: Amend the rule to reflect the GACHA recommendation. Addition of the word explicit is acceptable as this word does not change the meaning. “Explicit” in this context is consistent with the phrase “informed specific consent”. The current Board rules do not require written consent. Requiring written consent would increase barriers to testing, which is inconsistent with the announced purpose of the proposed WAC changes.
3. Anonymous Testing Information	(GACHA) However, we do not support the proposal to modify the requirement, in pretest counseling to inform people about the option of anonymous versus confidential testing, to require that information only “ <i>when appropriate.</i> ” (WAC 246-100-207 (1)(b)(iv)). GACHA understands that the modifier “as appropriate” was meant to address the manner in which this information is transmitted, not whether it is transmitted. Thus, GACHA suggests deleting “as appropriate” to avoid misinterpretation, or at least rewording WAC 246-100-207 (1)(b)(iv) to put “as appropriate” at the end of the sentence. (Others) Maintain requirement to provide information about anonymous for all persons testing for HIV.	Recommendation: Maintain proposed revision. The GACHA interpretation of the meaning of the modifier “as appropriate” is incorrect. The use of the phrase “as appropriate” was intended to recognize that there are limited circumstances when a discussion of an anonymous testing option is not medically appropriate. These circumstances can include testing following an occupational exposure and testing when the patient presents with signs or symptoms suggestive of HIV or AIDS. Written comments submitted following stakeholder meetings include such statements as: “...what criteria would be used in deciding who is told of the two tests and the differences between the two” indicate that the issue was correctly understood. The proposed rule supports the continued availability of anonymous testing.

¹ Others include the Lifelong AIDS Alliance, American Civil Liberties Union, and two individuals.

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4. Required Counseling	(GACHA) To realize the goal of having more people find out their HIV status, GACHA supports removal of prevention counseling from HIV testing. Thus, we would recommend the deletion of WAC 246-100-209 (1)(b) and (c): These are worthy prevention interventions, but should not be required for everyone consenting to an HIV test.	Recommendation: Maintain proposed revision. WAC 246-100-209 (1) requires a risk assessment, consideration of the individual's unique circumstances, and counseling only "as appropriate". Counseling is not required for everyone consenting to an HIV test.
5. Define Active Investigation	(GACHA) would ask the Board to define very specifically the word "active" in the condition when records can be kept for more than 90 days (an <i>active</i> investigation of conduct endangering the public health) WAC 246-100-072 (5)(b). (Others) also suggested that the term be defined, a time limit established for retention of names, and that this would constitute unfair use of the information for other purposes.	Recommendation: Maintain proposed revision. The local health officials conducting the investigation are best positioned to determine if an investigation is "active". For instance, maintaining a partner notification record on file for a year after all partner follow-up is complete, would not be considered an "active" investigation. Use of this information would be continue to limited to that authorized in statute – control of sexually transmitted diseases.
6. Providing Instruction to Persons with STDs	(GACHA) WAC 246-100-202 (b), requires that health care providers shall at each medical encounter, when providing treatment for an infectious sexually transmitted disease, provide instruction, appropriate to each patient. GACHA would like some elaboration on how this requirement would impact chronic care of people with HIV. What are the "Requirements to refrain from acts that may transmit the disease to another" that are referred to in this section?	Recommendation: Maintain proposed revision. The provider would be responsible for providing appropriate instruction to the patient based on the patient's practices, behaviors, and history. While not referenced in this section, a reasonable understanding would be "Conduct endangering the public health" as defined in WAC 246-100-203 (b).

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7. Testing for Hepatitis B and C	(GACHA) It would be reasonable to allow for testing for hepatitis B and C virus when there has been a substantial exposure that presents a risk of transmission of blood-borne pathogens and the source subject does not agree to test.	Recommendation: Retain the existing rule language. This issue should be considered for possible legislative action. This issue was not significantly discussed during the stakeholder process and is more appropriate for RCW change than WAC change.
8. Source Person Testing	(GACHA) It was also noted that the CDC's guidelines for HIV post-exposure prophylaxis recommend that therapy needs to be started within 72 hours to maximize the chance to prevent transmission. However, the WAC process allows for up to 7 days for the health officer to order the testing.	Recommendation: Retain the existing rule language, and consider this issue for future rule action. This issue was not significantly discussed during the stakeholder process. Impacted stakeholders were not adequately represented. Legislative requirements for source person testing were not tied to the provision of post-exposure prophylactic treatment
9. Partner Notification	(Others) Noted that the rules for partner notification should maintain a client-centered approach, that the new rules represent a threat to patient privacy, and that partner notification should be handled differently for HIV than for other STDs and other communicable diseases. One did not support the requirement that if a patient refuses to notify his/her partners, the health care provider must provide those names (when known) to the health officer.	Recommendation: Maintain proposed revision. CDC partner counseling and referral guidelines do take a client-centered approach; the proposed rule uses those guidelines as a standard. As names are already reported to the local health officer through case reporting, no additional privacy is threatened. This particular rule provision was established in 1988/89 and is not being proposed for revision.
10. "Suggestive" Laboratory Evidence	(Others) One did not support the use of laboratory evidence that is only "suggestive" of infection, as opposed to tests that are conclusive.	Recommendation: Retain the existing rule language, and consider this issue for future rule action.
11. Jail Detainees	(Others) One did not support "singling out" jail detainees as a separate group in WAC.	Recommendation: Retain the existing rule language. RCW 70.24.360 requires the Board to address jail detainees.